1. The Working Party was appointed by the Council of Representatives on 28 April 1970 "to examine the application of the Government of the Democratic Republic of the Congo to accede to the General Agreement under Article XXXIII and to submit recommendations which may include a draft protocol of accession". The Working Party met on 7 and 14 June 1971 under the Chairmanship of Mr. J.R. Samaranayake (Ceylon). It had before it the memorandum on the foreign trade régime of the Congo (L/3376) and the written replies of the Congo to the questions put by contracting parties (L/3522).

2. The Working Party welcomed the application of the Democratic Republic of the Congo and complimented its representatives for the comprehensive documentation that had been made available to the Working Party. The Working Party carried out an examination of the various points raised in the written questions and replies and asked for additional information on certain points.

3. The representative of the Congo confirmed that the Congo's foreign trade system was based on the principle of non-discrimination; no preferences were granted to any suppliers, and should preferences be granted in the future they would be in accordance with the provisions of Article XXIV of the GATT.

4. In reply to a question concerning bilateral trade agreements, the representative of the Congo stated that his Government had some commercial agreements but none of them contained provisions for discriminatory tariff rates, quotas or any other form of quantitative import commitments.
5. Members of the Working Party pointed out that the statistical tax of 3 per cent ad valorem applied by the Congolese authorities on imports was not commensurate with the service rendered and was contrary to the provisions of Article VIII:1(a). The representative of the Congo recognized that this tax exceeded the cost of the service, and explained that the surplus revenue from the tax would be employed toward improving the service. His authorities were prepared to consider the adjustment of the statistical tax, in the light of the provisions of Article VIII as soon as they would be in a position to afford it. The Working Party took note of this statement and invited the Government of the Democratic Republic of the Congo to re-examine its present method of application of the statistical tax and to report to the CONTRACTING PARTIES on the possibilities of bringing the tax into line with the provisions of Article VIII:1(a).

6. A member of the Working Party referred to the Superintendence Company whose functions were described in the Memorandum (L/3376) as including the supervision of imported goods - the checking of quality and quantity, and until January 1969, the checking of ex-factory prices of imported goods - and asked whether this did not constitute a burdensome formality for importers. The representative of the Congo explained that the control had been introduced at a time when the Congo had import quotas and foreign firms tended to repatriate funds by over-invoicing their imports. Since 1967, when the foreign reserve situation had improved, the control was reduced and was now limited to spot checks of price and quality on selected goods. The control was in no way designed to create obstacles to trade, but rather to ensure better use of external assets.

7. In reply to a question on the application of the turnover tax charged on imports described in the Memorandum (L/3376), the representative of the Congo stated that the tax was not applied exclusively to imports, but was equally applied to numerous domestic goods and services.

8. Members of the Working Party remarked that the Congo's "Tariff of Import Duties" is composed of two elements: the customs duty, and the revenue duty, which together make the aggregate import duties. It was pointed out that the bound rates in the schedule as proposed by the Congo would relate to the customs duty only, and that in fact these rates would be bound at a higher level than the
current applied rate. With regard to the revenue duty, the representative of the Congo confirmed that it was applicable to imports only, and that without discrimination as to origin. It was pointed out that shifts in the level of the revenue duty could have the effect of nullifying a concession on the bound customs duty if the aggregate import duties reached a higher level than that of the present aggregate. It was suggested that the question be dealt with in a separate note.

9. The delegation of the Congo stated emphatically that the instructions given by its Government did not allow it to extend the tariff concessions to the revenue duties appearing in the customs tariff. Thus the concessions could only apply to the customs duties as such. In support of this decision by his Government, the representative of the Democratic Republic of the Congo put forward arguments (see below) which in his view were not at variance with the provisions of the General Agreement, especially those of Article II.

10. The purpose of the revenue duty is:

1. to provide revenue for the Treasury;
2. to serve as the main item in budgetary import revenue and as a basis for annual budget estimates;
3. to ensure stability of budget receipts in spite of the establishment of regional agreements, free-trade areas, or bonded warehouses. In no instance may special régimes involve substantial fiscal losses.

In relation to the General Agreement, the revenue duty is not a restrictive measure within the meaning of Article XXIV:8.

It is applicable without discrimination of any kind, and whether in the case of customs unions or of free-trade areas, it applies equally to products from countries belonging to such customs unions or free-trade areas and to products from third countries. The latter are less adversely affected since the customs reductions apply only to a part, in some cases a very small part, of the duties charged when goods are imported.

Moreover, revenue duties are an absolute necessity for developing countries. It is generally recognized that if they are to develop, these countries must be able to enjoy financial resources to which they are entitled; and it is in their interest, vis-à-vis industrialized countries or other developing countries, to penetrate into customs territories beyond those circumscribed by their frontiers. But in view
of the present state of their economic development and the need to integrate it into world economy, there is a need for stability of tax revenue, and total tariff disarmament would make this a matter of chance. To offset this by instituting a variety of internal charges, as has become current practice in the more developed countries, might well have the effect of strongly curbing the rise in standard of living of the population, whose purchasing power is still restricted. This illustrates the importance of fiscal revenue from customs-type duties, as has already been recognized by the CONTRACTING PARTIES and evidenced in the various provisions inserted in Part IV of the General Agreement. But it should be noted in this connexion that the provisions in question refer only to revenue from customs duties charged exclusively on exported goods.

While recognizing the importance of the measures set forth in Article XXXVII concerning the commitments undertaken by developed contracting parties in regard to the elimination of barriers to trade - measures already taken by EEC in Yaoundé Convention II and by other contracting parties in the system of general preferences - we are obliged to point out that export earnings are insufficient to ensure the necessary budgetary stability. At frequent intervals, serious fluctuations occur in the prices of products which make the conditions for their disposal on the world markets less favourable and hence bring about a reduction, sometimes considerable, in earnings.

Actually, Part IV of the General Agreement recommends or urges in favour of developing countries the principle of a fiscal policy in regard to exports different from that generally applied by developed countries, namely the total elimination of export duties on products.

It must be recognized, however, that the customs tariff on imports takes on a considerable importance in the developing countries. With regard to the Democratic Republic of the Congo, because of the existence of revenue duties, distinct from customs duties as such, this tariff has made it possible to obtain an increasingly high percentage of import revenue in relation to export revenue. Thus in the past year, 1970, the proportion amounted to 50 per cent, and according to the estimates for 1971 it will be 65 per cent.
As far as the Democratic Republic of the Congo is concerned, the revenue duty - which we repeat is distinct from the customs duty - is a special levy on imports. Article II(b) makes reference to this type of duty. The provisions of this Article do not require this type of duty to be mentioned in the schedule of bindings.

The Democratic Republic of the Congo has therefore submitted a schedule of concessions including only customs charges, i.e. only comprising customs duties proper. Actually, account has therefore been taken, in accordance with Article XXVIII bis:3, of special fiscal and developmental needs.

In the view of the Congolese delegation in accordance with the spirit of the provisions of Article II, it would seem that by virtue of becoming a contracting party, a country is automatically committed in respect of these provisions. The Congolese representative therefore wonders whether it is appropriate at the time of its accession to specify this in a special note.

The Democratic Republic of the Congo, having no experience in respect of the practical application of the General Agreement, therefore feels it must bring the question to the attention of the delegations in this working party.

11. After discussion of the nature and effect of the revenue duties the Working Party considered that the revenue duties in the tariff of the Congo were not internal charges in the sense of Article III but should be considered as "other duties or charges" in the sense of Article II:1(b).

12. Following the discussion that ensued on the subject of the potential effect of shifts in the rates of revenue duties on the value of the bound customs duties, and taking into account the particular structure of the customs tariff, the representative of the Democratic Republic of the Congo agreed to make a Declaration of Intent, annexed to this report, concerning the level of the aggregate import duties. This Declaration of Intent would be referred to by a note in the schedule.

13. With reference to the Declaration of Intent, it was explained that the term "reasonable prior notification" was to be understood as meaning that when changes referred to in the Declaration were made, they would not be applicable to goods in course of shipment to the Congo.
14. In reply to a question, the representative of the Democratic Republic of the Congo confirmed that the current revenue duties were those contained in the 1968 "Tariff of Import Duties", which was deposited with the secretariat.

Conclusion

15. Having carried out the examination of the foreign trade régime of the Democratic Republic of the Congo and in the light of the assurances given by the Democratic Republic of the Congo, the Working Party reached the conclusion that, the Democratic Republic of the Congo should be invited to accede to the General Agreement under the provisions of Article XXXIII. For this purpose the Working Party has prepared a draft Protocol of Accession [to which the Schedule of Tariff Concessions is annexed] and a draft Decision for the Accession of the Democratic Republic of the Congo (annexed to this report). It is proposed that these texts be approved by the Council when it adopts this report. The draft Decision for the Accession will be submitted to a vote by CONTRACTING PARTIES in accordance with Article XXXIII.

When the Decision is adopted, the Protocol would be open for acceptance and the Democratic Republic of the Congo would become a contracting party thirty days after it accepts the Protocol.
Annex I

DEMONCRATIC REPUBLIC OF THE CONGO: DECLARATION OF INTENT

Because of the structure of its customs tariff, which provides for the application of the customs duty and a revenue duty, the Democratic Republic of the Congo declares its intention not to increase such revenue duties - applied, like customs duties on the c.i.f. value of the goods - above the level which, when aggregated with the customs duties, would exceed the combined rate of the customs duty rate set forth in this Schedule and the rate of revenue duty imposed on the date of entry into force of the Schedule. In any case, the Democratic Republic of the Congo will not do so without prior notification to the Contracting Parties within a reasonable period. In this event, the Contracting Parties concerned will endeavour, in the course of the consultations within the framework of the appropriate provisions of the General Agreement, to maintain a situation not less favourable to trade than existed on the date of accession of the Democratic Republic of the Congo.
Annex II

DRAFT NOTE FOR INCLUSION IN SCHEDULE -
DEMOCRATIC REPUBLIC OF THE CONGO

In addition to the rates specified hereunder, the Democratic Republic of the Congo applies revenue duties with respect to which a Declaration of Intent by the Democratic Republic of the Congo can be found annexed to the Report of the Working Party on Accession (BISD, Eighteenth Supplement).